

## **ARTICLE III**

### **ASSURANCE FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS**

#### **3-101 Improvements and Performance Surety**

##### **3-101.1 Completion of Improvements**

Before the final subdivision plat is signed by the planning commission officer specified in Subsection 2-105.1, Signing of Plat, of these regulations, all applicants shall complete, in accordance with the planning commission's decision and to the satisfaction of the appropriate governmental representative, all public way, sanitary sewer, water, storm water and other improvements, including lot improvements on the individual lots of the subdivision, as required in these regulations and approved by the planning commission, and shall offer for dedication such improvements to the governing body free and clear of all liens and encumbrances on the property and public improvements thus dedicated.

##### **3-101.2 Performance Surety**

The planning commission at its discretion may waive the requirement that the applicant complete and dedicate all public improvements prior to signing of the final subdivision plat by providing that, as an alternative, the applicant shall post either a surety company performance bond or provide a deposit of money or negotiable securities, including letters of credit, guaranteeing the performance of same. No building permit will be issued for any lot unless the street providing access is complete or the applicant shall have executed development agreements and posted appropriate surety instruments guaranteeing same. The amount and form of such surety instruments shall in all regards be sufficient to guarantee to the governing body, or other agency ultimately responsible for acceptance of the facilities, satisfactory construction, installation, and dedication, free and clear of any encumbrances, of the incomplete portion of required improvements.

Such surety instruments shall comply with all statutory requirements and shall be satisfactory to legal counsel as to form, sufficiency, and manner of execution, as set forth in these regulations. Security shall be good for at least two (2) construction seasons or such other time period the planning commission shall specify in approving the final subdivision plat. The planning commission may, upon proof of difficulty extend the completion date set forth in such instrument for a maximum time period covered by the development agreement. Each such extended time amendment shall be for a period of at least six (6) months.

##### **3-101.3 Reclamation Bonds**

In no event shall any "land development activity" (see definition) be initiated within any subdivision unless and until a "development agreement" as required by Subsection 2-103.4, Development Agreement, has been executed and either a "reclamation bond" or "performance surety" (as defined in these regulations) has been established. Where land is being subdivided but no public

improvements are being installed or such improvements are to be installed prior to approval of any final plat a reclamation bond shall be required. Where public improvements are involved and final plat(s) are proposed to be recorded prior to completion of such improvements the performance surety required for such improvements shall include funds for reclamation. In all instances, such reclamation bond shall be sufficient to ensure that funds are available to stabilize a development site so as to prevent damage to public property or nearby private property in the event the developer does not complete the work.

#### **3-101.4 Temporary Improvements**

The applicant shall build and pay all costs of temporary improvements required by the planning commission, and shall maintain these improvements to a reasonable satisfaction for the period specified by the planning commission. Prior to construction of any temporary facility or improvement, the applicant shall file with the planning commission a suitable surety instrument for temporary facilities, which shall ensure that the temporary facilities will be properly constructed, maintained, and removed.

#### **3-101.5 Costs of Improvements**

The applicant shall make all required improvements at his expense. Any provisions for reimbursement by the governing body or any other agency shall be stipulated clearly in the provisions of any development agreements.

#### **3-101.6 Governmental Units**

Governmental units to which these provisions apply may file, in lieu of said development agreement and surety, a certified resolution or ordinance from officers or agencies authorized to act in their behalf agreeing to comply with the provisions of these regulations.

### **3-102 Surety Standards and Requirements**

#### **3-102.1 General**

In order to ensure that the work will be completed in accordance with approved plans and specifications, all engineering improvements proposed in conjunction with any subdivision must be covered by adequate surety unless such work is to be totally completed prior to filing of any final plat for any portion of the development site. When the work is to be completed prior to filing of a final plat, the amount of such surety (see Subsection 3-101.3, Reclamation Bonds) shall be sufficient to ensure that the building site may be stabilized in the event of the failure of the applicant to complete the work.

#### **3-102.2 Amount of Surety**

The subdivider shall post good and sufficient surety with the planning commission in the amount of one hundred twenty-five (125) percent of the Enforcing Officer's estimate of cost to assure completion of the work. Good and

sufficient surety shall include the types of surety specified in Subsection 3-102.3. Each security shall be accompanied by a "Development Agreement", as found in Subsection 2-103.4, Development Agreement, whereby the subdivider agrees to make and install the improvements in accordance with the approved plans and specifications.

### **3-102.3 Types of Surety**

Subject to the standards and requirements of this Article and acceptance by the planning commission, the following types of surety may be accepted for purposes of guaranteeing completion of improvements required by the regulations:

- **Irrevocable Standby Letter of Credit**
- **Cash Escrow or bank assignment of certificates of deposit with a federally insured bank having assets of at least \$100 million**
- **Performance bond**

#### **3-102.301 Irrevocable Standby Letters of Credit**

An irrevocable standby letter of credit may be utilized as the means of providing surety for improvements required under the various provisions of these Regulations. Any letter of credit shall be drafted so as to represent an obligation of the financial institution to the city and not an obligation to the permittee. All Letters of Credit, and each provision thereof, shall be governed and construed in accordance with the Uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce, Publication 400 and Sections 47-5-101 through 47-5-118, Tennessee Code. All irrevocable standby letters of credit shall provide a location within Sumner County or a county adjoining Sumner County where such letter(s) may be drawn upon.

#### **3-102.302 Escrow Deposits for Improvements**

##### **a. Acceptance of Escrow Funds**

The term "Cash Escrow" as used in these regulations refers to two types of performance guarantees, cash escrows and bank assignment of funds. In the case of either cash or other near cash (i.e., certificates of deposit) guarantees, all funds shall be maintained in accounts that are beyond the reach of the developer and subject to an escrow agreement.

##### **b. Procedures on Escrow Fund**

All escrows shall be held by the city, kept in its bank accounts, and be totally under control of the city. A detailed "Escrow Agreement" shall be prepared and appropriately endorsed by all parties to such agreement at the time of creation of any escrow account. The developer's tax identification shall be used for the escrow and the developer shall be responsible for paying tax on any interest credited to the escrow account.

c. Escrow Funds Held Following Issuance of Certificate of Occupancy

When escrow funds are accepted for required improvements at the time of issuance of a certificate of occupancy such improvements shall be installed by the developer within a period of nine (9) months from the date of deposit and issuance of the certificate of occupancy. In the event that the improvements have not been installed properly at the end of the time period, the Enforcing Officer shall provide written notice of two (2) weeks to the developer requiring him to install the improvements, and in the event such improvements are not installed properly, in the judgment of the Enforcing Officer, he may request the governing body to proceed to install or to contract for the installation of the necessary improvements in a sum not to exceed the amount of the escrow deposit.

At the time of issuance of the certificate of occupancy for which escrow moneys are being deposited the applicant shall obtain and file with the Enforcing Officer, prior to obtaining the certificate of occupancy, a notarized statement from the purchaser(s) of the premise authorizing the Enforcing Officer to install the improvements at the end of the nine (9) month period in the event the improvements have not been installed properly by the developer.

**3-102.303 Performance Bonds**

A performance bond may be used as the means of providing surety for improvements required under the various provisions of these Regulations. In no instance shall any performance bond be accepted as a guarantee unless a "Development Agreement" required by the provisions of Subsection 2-103.4, Development Agreement, accompanies such bond. Such agreement shall detail the specific nature and estimated cost of all improvements. All performance bonds shall provide a location within Sumner County or a county adjoining Sumner County where such bond(s) may be drawn upon. All performance bonds shall be drafted so that the only requirement for the city to draw upon such bond is to notify the financial institution (grantor) that:

"We have incurred liability by reason of the failure of the applicant/developer/owner, within ninety (90) days of the expiration of this letter, to complete the construction of their project [insert name of subdivision and plans] in accordance with the definitive subdivision plans and development agreement and the rules and regulations governing the subdivision of land within the Portland Planning Region." The amount drawn, which may be more than required to complete the project, will be held in a segregated bank account until the work can be bid competitively and the bid awarded and paid for or until the contract for the work is otherwise let and the work paid for. Any excess over the cost of completing the work will be returned to the grantor."

### **3-103 Failure to Complete Improvements**

In those cases where development agreements have been established, surety instruments have been posted and required improvements have not been installed within the terms of such agreements, the planning commission thereupon may declare the surety to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the surety is declared to be in default. If the improvements are not completed within the time period specified, (including any extension thereof approved as provided in Subsection 3-101.2, above), no additional building permits shall be issued for any lot or portion of such property until such facilities are either completed to the satisfaction of the governing body or new surety instruments guaranteeing the construction thereof are executed. The applicant and the financial institution issuing the surety shall be liable severally and jointly for completing said improvements according to specifications.

### **3-104 Maintenance of Improvements**

The applicant shall be required to maintain all improvements until acceptance by the governing body. Additionally, the applicant shall be required to file a maintenance/warranty bond with the governing body prior to acceptance. This bond is established for purposes of assuring the quality of the materials and construction of such facilities. Such bond shall be in an amount considered adequate by the Enforcing Officer to assure satisfactory condition of the required improvements. In no event will this bond be set below an amount equal to fifteen (15) percent of the estimated original cost of such improvements.

### **3-105 Inspection of Improvements**

The city may provide for inspection of required improvements during construction. If the appropriate governmental representative finds upon inspection that any of the required improvements have not been constructed in accordance with the accepting body's construction standards and specifications, the applicant shall be responsible for completing such improvements to the required standards. The fact that the city inspects the facilities in no way relieves the developer from designing or installing such facilities in accordance with the provisions of these regulations and the established development agreement.

### **3-106 Release or Reduction of Reclamation or Performance Bond**

#### **3-106.1 Certificate of Satisfactory Completion**

Prior to release of any performance surety the engineer in charge of construction of such improvements shall be required to certify that such improvements have been installed in accordance with provisions of these regulations, the completed development agreement and the approved plans and specifications. Upon receipt of such certification and recommendations from the public works committee and planning commission, the governing body may accept the dedicated improvements in accordance with the procedures set forth in Section 3-107, Acceptance of Dedication Offers, of these regulations.

### **3-106.2 Reduction of Performance Bonds**

The surety instruments guaranteeing installation of improvements may be reduced based upon actual completion of the work. At all points in time the dollar amount of the surety being held shall as a minimum equal the estimated value of the work remaining plus fifteen (15) percent of the dollar value of such work. In no event shall the surety be reduced below fifteen (15) percent of the principal amount prior to final acceptance of all items covered under such instrument.

### **3-107 Acceptance of Dedication Offers**

Acceptance of offers of dedication of improvements for public maintenance shall be by action of the governing body. Such action shall be in the form of a resolution recommended by the planning commission to the accepting body. Approval by the planning commission of a subdivision plat shall not be deemed to constitute or imply an acceptance by the local government, or other agency ultimately responsible for acceptance of the facilities, of any public way, easement, or other ground shown on the plat. The planning commission may require the plat to be endorsed with appropriate notes to this effect.

### **3-108 Deferral or Waiver of Required Improvements**

The planning commission may defer or waive at the time of final plat approval, subject to appropriate conditions, the provision of any or all such improvements as, in its judgment, are not requisite in the interest of the public health, safety, and general welfare, or which are inappropriate, because of inadequacy or lack of connecting facilities.

Whenever it is deemed necessary by the planning commission to defer construction of any improvement required herein because of incompatible grades, future planning, inadequate or lack of connecting facilities, or other reasons, the developer shall either pay his share of the costs of the future improvements to the governing body prior to signing of the final subdivision plat or post a bond ensuring completion of said improvements.

### **3-109 Issuance of Building Permits and Certificates of Occupancy**

Where development agreements and surety instruments have been required for a subdivision, or any section of a subdivision, and such are determined to be in default, no building permit or certificate of occupancy shall be issued for any building in the subdivision or any affected section thereof prior to completion and dedication of the improvements to the appropriate governmental unit, as required in the planning commission's resolution of final approval of the subdivision plat.

The extent of public way improvements shall be adequate for vehicular access by the prospective occupant and by police and fire equipment prior to the issuance of a building permit.

No building permit shall be issued for the final ten (10) percent of lots in a subdivision, or if ten (10) percent is less than two (2) lots, for the final two (2) lots of a subdivision, until all public improvements required by the planning commission's resolution of final plat approval have been fully completed, dedicated, and accepted by the governing body.